Vigneswaran a/l Nittiyananthan v Siva Pakkiam a/p Ramasamy

HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO WA-33–167–03 OF 2016
EVROL MARIETTE PETERS J
4 JUNE 2025

Civil Procedure — Contempt of court — Committal proceedings — Petitioner-husband filed committal proceedings against respondent-wife for failure to give access to child — Parties entered into consent order with regard to right to access — Respondent-wife failed to comply with consent order — Petitioner-husband filed committal application for respondent-wife's failure to comply with consent order — Whether there was wilful refusal to comply with consent order — Whether wishes of child should be considered in committal proceedings — Whether committal application was an abuse of process — Whether petitioner-husband's failure to pay maintenance warranted denial of access to child — Appropriate sanction for respondent-wife's non-compliance with consent order — Courts of Judicature Act 1964 s 13 — Federal Constitution art 126 — Law Reform (Marriage and Divorce) Act 1976 ss 88 & 100 — Rules of Court 2012 O 52 r 4

The petitioner-husband and the respondent-wife were married in December 2011 and were blessed with a child ('the child') in November 2014. However, their relationship was short-lived as it ended with a dissolution of the marriage via a court order dated 29 June 2018 ('the 2018 order'). Pursuant to the 2018 order, the court had granted the guardianship of the child to the parties whilst the custody, care, and control were awarded solely to the respondent. The petitioner was granted access to the child. The problem arose when the petitioner's right of access to the child was denied by the respondent. This denial of access had prompted the petitioner to file multiple committal applications against the respondent. The third committal application also related to the non-compliance with terms regarding access to the child and this application ended with a consent order ('the consent order'). When the respondent failed to comply with the specific terms of the consent order, the petitioner filed the fourth committal application ('the present committal application') against the respondent pursuant to O 52 r 4 of the Rules of Court 2012. In the present committal application, the issues to be determined by the court were as followed: (a) whether there was wilful refusal to comply with the consent order; (b) whether the wishes of the child should be considered in committal proceedings; (c) whether the present committal application was an abuse of process — in relation to this issue, the respondent claimed that the present application was the petitioner's fourth committal application against

the respondent and, as such, the petitioner was seeking to punish the respondent, rather than to resolve access issues; (d) whether the petitioner's failure to pay maintenance warranted a denial of access to the child; and (e) what was the appropriate sanction for the respondent's non-compliance with the consent order.

Held, allowing the present committal application with costs, and ordering the respondent to pay RM20,000 fine:

(1) In addressing the issue of wilful non-compliance with the court order, it was essential to first establish the undisputed facts. It was clear that the respondent failed to adhere to the terms of the consent order by entirely obstructing contact between the petitioner and the child. This lack of compliance was not incidental or partial, it constituted a complete denial of the petitioner's access rights as outlined in the consent order (see para 19).

(2) While the wishes of a child should be given due consideration, particularly when the child demonstrated a sufficient level of age and maturity, such preferences were not, in themselves, determinative. The legal position was unequivocal: the 'welfare of the child' remained the paramount consideration. This principle was clearly articulated in s 88 of the Law Reform (Marriage and Divorce) Act 1976 ('Act 164'). In the present case, there was no evidence before the court to suggest that the petitioner had ever been abusive, neglectful, or otherwise unfit to have contact with the child. In light of this, the court was of the firm view that it was in the best interest of the child's welfare for the petitioner to continue having access. Most importantly, according to the consent order, the petitioner's access to the child was not conditional upon the child's wishes. Hence there was no basis for the respondent to deny the petitioner's access to the child (see paras 30 & 42–43).

(3) Contempt of court was less about an individual's personal failure to follow orders and more about the broader principle that the judicial system must be respected and able to operate without interference. Therefore, although this was the petitioner's fourth committal application, it could not be construed as an abuse of the court's process. Rather, it was a necessary recourse in light of the respondent's repeated and wilful non-compliance with binding court orders. Further, since the respondent had insisted that the child was traumatised as a result of spending time with his father, the court opined that the child together with the parties should seek the services of a psychologist to have their mental health evaluated, pursuant to s 100 of Act 164 (see paras 54–55 & 61).

(4) The respondent argued that she should not be punished for not complying with the consent order because the petitioner himself had on

multiple instances failed to pay child maintenance pursuant to the 2018 order. The court was unable to accept this argument for the following reasons: (a) this allegation was a general one with no specifics provided; (b) if the petitioner did in fact fail to pay child maintenance pursuant to the terms of the 2018 order, the respondent was at liberty to initiate committal proceedings against him, which she had not done; and (c) it was crucial to distinguish between maintenance and access, as they were distinct issues — in the present case, access to the child was never contingent upon maintenance payments. As such, the petitioner's failure to pay child maintenance, if at all, was not a basis or justification for the respondent to withhold the petitioner's access to the child (see paras 65–68 & 70).

(5) The power of the court to punish the respondent for contempt of court was found in art 126 of the Federal Constitution, and s 13 of the Courts of Judicature Act 1964. The primary function of the court was to administer justice impartially, not to be used as a vehicle for one party to exact revenge against the other. Consequently, any punishment imposed must serve the interests of justice rather than act as retribution for the petitioner. The purpose of the contempt proceedings was not to vindicate the petitioner but to uphold the court's authority and ensure compliance with its orders. With this in mind, the court had imposed a fine of RM20,000 against the respondent (see paras 71, 74 & 76).

[Bahasa Malaysia summary

Pempetisyen-suami dan responden-isteri telah berkahwin pada bulan Disember 2011 dan dikurniakan seorang anak ('anak tersebut') pada bulan November 2014. Walau bagaimanapun, hubungan mereka tidak kekal lama kerana ia berakhir dengan pembubaran perkahwinan melalui perintah mahkamah bertarikh 29 Jun 2018 ('perintah 2018'). Menurut perintah 2018, mahkamah telah memberikan hak penjagaan anak tersebut kepada pihak-pihak tersebut manakala hak jagaan, pemeliharaan dan kawalan diberikan sepenuhnya kepada responden. Pempetisyen telah diberikan akses kepada anak tersebut. Masalah timbul apabila hak akses pempetisyen ke atas anak tersebut dinafikan oleh responden. Penafian akses ini telah mendorong pempetisyen untuk memfailkan beberapa permohonan pengkomitan terhadap responden. Permohonan pengkomitan yang ketiga juga berkaitan dengan ketidakpatuhan kepada terma-terma mengenai akses kepada anak tersebut dan permohonan ini berakhir dengan satu perintah persetujuan ('perintah persetujuan tersebut'). Apabila responden gagal mematuhi terma-terma khusus perintah persetujuan tersebut, pempetisyen memfailkan permohonan pengkomitan keempat ('permohonan pengkomitan semasa') terhadap responden menurut A 52 k 4 Kaedah-Kaedah Mahkamah 2012. Dalam permohonan pengkomitan semasa, isu-isu yang perlu ditentukan oleh mahkamah adalah seperti berikut: (a) sama ada terdapat penolakan yang

A disengajakan untuk mematuhi perintah persetujuan tersebut; (b) sama ada kehendak anak tersebut harus dipertimbangkan dalam prosiding pengkomitan; (c) sama ada permohonan pengkomitan semasa merupakan penyalahgunaan proses — berhubung dengan isu ini, responden mendakwa bahawa permohonan semasa adalah permohonan pengkomitan keempat
B pempetisyen terhadap responden dan, oleh itu, pempetisyen cuba menghukum responden, dan bukannya menyelesaikan isu akses; (d) sama ada kegagalan pempetisyen untuk membayar nafkah mewajarkan penafian akses kepada anak tersebut; dan (e) apakah sanksi yang sesuai untuk ketidakpatuhan
C responden terhadap perintah persetujuan tersebut.

Diputuskan, membenarkan permohonan pengkomitan semasa dengan kos, dan memerintahkan responden membayar denda RM20,000:

(1) Dalam menangani isu ketidakpatuhan yang disengajakan terhadap
D perintah mahkamah, adalah penting untuk membuktikan fakta yang tidak dipertikaikan terlebih dahulu. Dalam kes semasa, jelas bahawa responden gagal mematuhi terma perintah persetujuan tersebut dengan menghalang sepenuhnya hubungan antara pempetisyen dan anak tersebut. Kegagalan pematuhan ini bukanlah sesuatu yang sampingan
E atau sebahagian, ia merupakan penafian sepenuhnya hak akses pempetisyen seperti yang digariskan dalam perintah persetujuan tersebut (lihat perenggan 19).

(2) Walaupun kehendak seorang kanak-kanak harus diberi pertimbangan
F yang sewajarnya, terutamanya apabila kanak-kanak tersebut menunjukkan tahap umur dan kematangan yang mencukupi, namun, kehendak tersebut sendiri bukanlah penentu. Kedudukan undang-undang adalah jelas: 'kebajikan kanak-kanak' kekal sebagai pertimbangan utama. Prinsip ini dinyatakan dengan jelas dalam s 88
G Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta 164'). Dalam kes semasa, tiada keterangan di hadapan mahkamah yang menunjukkan bahawa pempetisyen pernah mendera, cuai, atau tidak layak untuk berhubung dengan anak tersebut. Memandangkan perkara ini, mahkamah berpendapat bahawa adalah demi kepentingan
H kebajikan anak tersebut untuk pempetisyen terus mempunyai akses. Paling penting, mengikut perintah persetujuan tersebut, akses pempetisyen kepada anak tersebut tidak bergantung pada kehendak anak tersebut. Oleh itu, tiada asas bagi responden untuk menafikan akses pempetisyen kepada anak tersebut (lihat perenggan 30 & 42–43).

I (3) Penghinaan terhadap mahkamah bukanlah mengenai kegagalan peribadi seseorang individu untuk mematuhi perintah tetapi lebih kepada prinsip yang lebih luas bahawa sistem kehakiman harus dihormati dan dapat beroperasi tanpa gangguan. Oleh itu, walaupun ini merupakan permohonan pengkomitan keempat pempetisyen, ia tidak boleh

ditafsirkan sebagai penyalahgunaan proses mahkamah. Sebaliknya, ia merupakan jalan penyelesaian yang perlu memandangkan responden berulang kali dan sengaja tidak mematuhi perintah mahkamah yang mengikat. Tambahan pula, memandangkan responden menegaskan bahawa anak tersebut telah mengalami trauma akibat daripada meluangkan masa bersama bapanya, mahkamah berpendapat bahawa anak tersebut bersama-sama dengan pihak-pihak yang terlibat harus mendapatkan khidmat ahli psikologi untuk menilai kesihatan mental mereka, menurut s 100 Akta 164 (lihat perenggan 54–55 & 61).

(4) Responden berhujah bahawa dia tidak seharusnya dihukum kerana tidak mematuhi perintah persetujuan tersebut kerana pempetisyen sendiri telah beberapa kali gagal membayar nafkah anak menurut perintah 2018. Mahkamah tidak dapat menerima hujah ini atas sebab-sebab berikut: (a) dakwaan ini adalah dakwaan umum tanpa butiran khusus yang diberikan; (b) jika pempetisyen sememangnya gagal membayar nafkah anak menurut terma-terma perintah 2018, responden bebas untuk memulakan prosiding pengkomitan terhadap pempetisyen, namun ini tidak dilakukan oleh responden; dan (c) adalah penting untuk membezakan antara nafkah dan akses, kerana ia adalah isu yang berbeza – dalam kes semasa, akses kepada anak tersebut tidak pernah bergantung pada pembayaran nafkah. Oleh itu, kegagalan pempetisyen untuk membayar nafkah anak, jika ada, bukanlah asas atau justifikasi bagi responden untuk menahan akses pempetisyen kepada anak tersebut (lihat perenggan 65–68 & 70).

(5) Kuasa mahkamah untuk menghukum responden kerana menghina mahkamah diperuntukkan dalam perkara 126 Perlembagaan Persekutuan, dan s 13 Akta Mahkamah Kehakiman 1964. Fungsi utama mahkamah adalah untuk mentadbir keadilan secara saksama, bukan untuk digunakan sebagai wahana bagi satu pihak untuk membalas dendam terhadap pihak yang lain. Oleh itu, apa-apa hukuman yang dikenakan haruslah demi kepentingan keadilan dan bukannya bertindak sebagai pembalasan kepada pempetisyen. Tujuan prosiding penghinaan mahkamah bukanlah untuk mempertahankan pempetisyen tetapi untuk menegakkan kuasa mahkamah dan memastikan pematuhan terhadap perintahnya. Dengan ini, mahkamah telah mengenakan denda sebanyak RM20,000 terhadap responden (lihat perenggan 71, 74 & 76).]

Cases referred to

APE v APF [2015] SCD 305; [2015] SGHC 17, CA (refd)
Chandra Sri Ram v Murray Hiebert [1997] 3 MLJ 240; [1997] 3 CLJ Supp 518, HC (folld)
Fairclough & Sons v Manchester Ship Canal Co (No 2) [1897] WN 7, CA (refd)
GBC v TSB (Civil Appeal No B-02(IM)-1408–09 of 2023), CA (folld)
Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd [2001] 4 MLJ 577, CA (refd)

Lee Chang Yong v Teng Wai Yee [2017] MLJU 1841, HC (refd)
Mahabir Prasad v Mahabir Prasad [1982] 1 MLJ 189; [1981] CLJ Rep 182, FC (refd)
MIL v MON and another application [2024] 12 MLJ 843; [2024] 7 CLJ 306, HC (refd)
Sean O' Casey Patterson v Chan Hoong Poh & Ors [2011] 4 MLJ 137; [2011] 3 CLJ 722, FC (refd)
Tan Erh Ling v Ong Khong Wooi [2021] MLJU 1583; [2021] CLJU 1325; [2021] 1 LNS 1325, HC (refd)
Tan Sherry (P) v Soo Sheng Fatt (L) [2016] MLJU 1264; [2016] CLJU 1586; [2016] 1 LNS 1586, HC (refd)
Tan Siew Kee v Chua Ah Boey [1988] 3 MLJ 20; [1987] CLJU 77; [1987] 1 LNS 77, HC (refd)
Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458, FC (refd)
Teh Eng Kim v Yew Peng Siong [1977] 1 MLJ 234; [1977] CLJU 138; [1977] 1 LNS 138, FC (refd)
TO Thomas v Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151, FC (refd)
WKM v WKN [2024] SCD 56; [2024] SGCA 1, CA (folld)

Legislation referred to

Courts of Judicature Act 1964 s 13
Federal Constitution art 126
Guardianship of Infants Act 1961 ss 3, 5
Law Reform (Marriage and Divorce) Act 1976 ss 88, 88(2), (2)(b), 100, 101

Malcolm Fernandez (with Vhimall Murugesan) (Malcolm Fernandez) for the petitioner.
S Santhi (S San & Co) for the respondent.

Evrol Mariette Peters J:

INTRODUCTION

[1] This was the petitioner-husband's application in encl 219, pursuant to O 52 r 4 of the Rules of Court 2012 ('the Rules of Court'), to cite the respondent-wife for contempt, for non-compliance with the terms of a consent order dated 8 May 2024.

THE FACTUAL BACKGROUND

[2] The petitioner and respondent (collectively 'the parties'), both aged 45 years old at the time of the hearing of this application, were married in December 2011, and welcomed a son ('the child'), in November 2014.

[3] In March 2016, the petitioner filed a divorce petition, which led to the dissolution of the marriage by a court order dated 29 June 2018 ('the June 2018 court order'). According to the terms of the June 2018 court order, joint guardianship of the child was granted to the parties, with custody, care, and control awarded solely to the respondent.

[4] The petitioner was granted access to the child pursuant to the June 2018 court order, the relevant terms of which read:

> 1) *Hak penjagaan* ('guardianship') bersama bagi anak perkahwinan KAJ *diberikan kepada Pempetisyen Suami dan Responden Isteri;*
>
> ...
>
> 3) *Pempetisyen Suami diberikan akses* pada setiap minggu dari hari Jumaat hingga hari Ahad dan untuk maksud ini Pempetisyen Suami boleh *menjemput anak perkahwinan di rumah Responden Isteri di Bahau* pada hari Jumaat di antara jam 7.00 malam sehingga 10.00 malam dan *menghantar semula anak perkahwinan kepada Responden Isteri di CIMB Cawangan Kuala Pilah* pada hari Ahad di antara jam 12.00 tengahari sehingga 2.00 petang di mana Pempetisyen Suami dikehendaki memaklumkan kepada Responden Isteri secara sms anggaran ketibaan. (Emphasis added.)

[5] In June 2021, the respondent commenced committal proceedings against the petitioner, alleging that he had refused to return the child after he had exercised his right of access. As a result of such application, the child was returned to the respondent in January 2022.

[6] However, the petitioner claimed that since January 2022, he had been denied access to the child and was not provided with any information regarding the child's whereabouts or well-being. The petitioner then filed an application to vary the June 2018 court order, and pursuant to such application, in August 2022, the petitioner obtained sole custody, care, and control of the child ('the August 2022 court order').

[7] It was then discovered that the respondent had relocated and had unilaterally moved the child to Singapore, where they both were currently residing. As a result, in February 2023, the petitioner filed an application for and obtained leave to initiate committal proceedings against the respondent ('the first committal application'). Simultaneously, the respondent filed an application in encl 117 to set aside the August 2022 court order.

[8] However, the first committal application was subsequently withdrawn, and parties informed the court of their intention to independently pursue a global settlement of all issues. As a result, the August 2022 court order was set aside in March 2023.

[9] Regrettably, the respondent's denial of the petitioner's access to the child persisted beyond March 2023. Due to the continued non-compliance with the access orders, the petitioner was compelled to initiate a second committal application against the respondent in August 2023 ('the second committal application').

[10] The second committal application was subsequently heard, and in December 2023, the court found the respondent in contempt of court. As a consequence, a fine of MYR7,000 was imposed on the respondent, with a directive to settle the amount within ten days from the date of the court's decision. In default of payment, the respondent would be subjected to a term of imprisonment of seven days.

[11] In January 2024, the petitioner filed a third committal application, also for non-compliance with terms regarding access to the child. However, parties had subsequently decided to settle the matter which led to a consent order in May 2024 ('the May 2024 consent order'), terms of which read:

> Pempetisyen Suami diberikan akses kepada Anak Perkahwinan tersebut setiap hujung minggu alternative dari jam di antara 10.00 pm hari Jumaat sehingga ham 8.00 pm dari Ahad. Akses akan bermula dari 10.5.2024.
>
> Bagi setiap peruntukan akses sepertimana yang dinyatakan di perenggan 3 dan 4 di atas, Responden Isteri harus menghantar Anak Perkahwinan tersebut Alamat Pempetisyen Suami di 59-1, Lorong Kasipillai, Jalan Ipoh, 51200 Kuala Lumpur pada hari Jumaat dan menjemput Anak Perkahwinan tersebut dari Alamat 59–1, Lorong Kasipillai, Jalan Ipoh, 51200 Kuala Lumpur selepas tamatnya akses sepertimana yang dinyatakan dalam perenggan 1 dan 2 di atas.

[12] However, owing to the respondent's immediate non-compliance with the specific terms of the May 2024 consent order as set out above, the petitioner was left with no choice but to initiate a fourth committal application within the same month ('this application').

THE ISSUES

[13] In assessing whether the respondent had willfully failed to comply with the terms of the May 2024 consent order, the court considered two principal arguments advanced by the respondent. First, she argued that the child's wishes should be considered when evaluating her compliance with the access provisions granted to the petitioner. Second, the respondent asserted that this application constituted an abuse of process, alleging that it had been initiated in bad faith or with an ulterior motive, rather than for the genuine enforcement of rights under the consent order.

[14] The respondent also contended that her non-compliance with the May

2024 consent order was warranted, asserting that the petitioner had himself failed to comply with the obligations imposed under the June 2018 court order, specifically in relation to the payment of child maintenance.

[15] This application was allowed, and the respondent who was found in contempt of court, was ordered to pay a MYR20,000 fine.

CONTENTIONS, EVALUATION, AND FINDINGS

Whether there was wilful refusal to comply with the May 2024 consent order

[16] It is trite that contempt proceedings should be founded on a deliberate and willful refusal to comply with a court order. This principle finds resonance in the words of Chief Justice Lee Hun Hoe (Borneo), who, while referencing the case of *Fairclough & Sons v Manchester Ship Canal Co (No 2)* [1897] WN 7 in *TO Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151, underscored that, to establish contempt of court, 'an order of court must have been contumaciously disregarded. It is no good if it is casual, accidental, and unintentional'.

[17] In my view, the term 'intention' as elucidated by Lee Hun Hoe (Borneo) CJ in *TO Thomas v Asia Fishing Industry Pte Ltd* pertained to the clarity and unambiguity of a court order. In any event, in the same case on the issue of 'intention', it was further stated by Lee Hun Hoe (Borneo) CJ, in the following passage:

> Intention is of no consequence in the matter of contempt by disobedience to a court order*: A-G v Walthamstow Urban District Council* [1895] 11 TLR 533. *Stancomb v Trowbridge Urban District Council* [1910] 2 Ch 190. In particular, Donovan LJ expressed his view clearly in *Re Attorney-General's Application, Attorney-General's v Butterworth and others* [1963] 1 QB 696 in these words:
>
> > I conceive the position, however, to be this. *R v Odham's Press Ltd and others, ex parte Attorney General* [1957] 1 QB 73; [1956] 3 All ER 494 makes it clear that an *intention to interfere with the proper administration of justice is not an essential ingredient of the offence of contempt of court. It is enough if the action complained of is inherently likely so to interfere.*(Emphasis added.)

[18] My attention was also brought to the case of *Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd* [2001] 4 MLJ 577, where it was held that 'mens rea is not an ingredient to be proved in contempt proceedings' and that 'the corollary of there being no necessity to prove *mens rea* is that lack of intention does not prevent an alleged contemnor from being found guilty of contempt'. Thus, the respondent's intention, or lack of it, did not have any bearing on her conduct in not complying with the terms of the May 2024 consent order.

[19] In addressing the issue of willful non-compliance with the court order, it was essential to first establish the undisputed facts. It was clear that the respondent failed to adhere to the terms of the May 2024 consent order by entirely obstructing contact between the petitioner and the child. This lack of compliance was not incidental or partial, it constituted a complete denial of the petitioner's access rights as outlined in the May 2024 consent order.

Whether wishes of the child should be considered in committal proceedings

[20] The respondent argued that the wishes of the child, who was 11 years old at the time of the hearing of this application, should be considered. She claimed that the child had expressed unhappiness and had refused to meet the petitioner. In support of this, the respondent relied on s 88(2) of the Law Reform (Marriage and Divorce) Act 1976 ('the Law Reform (Marriage and Divorce) Act'), which provides that in deciding the custody of a child, the court shall have regard to the wishes of the child. The provision reads:

> Section 88 — Power of Court to make order for custody
>
> ...
>
> (2) In deciding in whose custody, a child should be placed *the paramount consideration shall be the welfare of the child* and subject to this the court shall have regard —
>
> ...
>
> (b) to the *wishes of the child*, where he or she is of an age to express an independent opinion. (Emphasis added.)

[21] First and foremost, it was crucial to distinguish the nature of this application. This was an application for committal, not an application for custody, care, and control of the child.

[22] Under s 88(2)(b) of the Law Reform (Marriage and Divorce) Act, the court is required to take into consideration the wishes of the child, where such wishes can be reasonably ascertained, when making an order for custody. However, in the present case, custody was not in dispute. Custody of the child had already been granted solely to the respondent pursuant to the June 2018 court order, and that had never changed. Therefore, the issue of custody, which had already been settled, was not the subject of this application to trigger s 88(2)(b) of the Law Reform (Marriage and Divorce) Act.

[23] Instead, the central issue in the present case concerned visitation and access rights of the petitioner. The petitioner sought to enforce his right to have contact with the child, rights which were granted by the June 2018 court order as well as the May 2024 consent order, but were being persistently denied by the respondent. Despite the terms in the May 2024 consent order regarding

access, the respondent had continuously failed or refused to allow the petitioner to exercise his access rights. As such, this application was filed not to challenge custody, but to hold the respondent accountable for non-compliance with the May 2024 consent order.

[24] Secondly, it was important to note that judicial interviews with children are not mandatory. Opting not to interview a child is a decision that may be deemed appropriate, as its efficacy often hinges on the unique circumstances of each case. It was crucial to acknowledge the inherent constraints of this approach and exercise prudence, recognising that valuable insights may also be gleaned from the parents of the child, and even their solicitors. These alternative avenues provide judges with comprehensive information, alleviating any apprehensions about inadvertently involving children in the complexities of contentious legal proceedings through direct interviews.

[25] I had referred to the case of *MIL v MON and another application* [2024] 12 MLJ 843; [2024] 7 CLJ 306 and drew guidance from the Singapore Court of Appeal, namely *WKM v WKN* [2024] SCD 56; [2024] SGCA 1. In delivering the decision of the latter case, Debbie Ong Siew Ling JAD, underscored the following in her statement:

> The judicial interview should not become a step where the court takes a snapshot of an emotional position at a particular point in time and reaches a decision based on that momentary picture. Information obtained through other sources would enable the court to have a longitudinal view of the history of the case and a fuller understanding of the family's relationships and issues.

[26] Despite my initial reservations regarding the appropriateness and potential impact of conducting a judicial interview with the child, I ultimately decided to proceed with an informal conversation to better ascertain the child's views and emotional state. My aim was to understand, in the least intrusive manner possible, the underlying reasons for the child's reluctance to engage with the petitioner.

[27] However, as the conversation progressed, it became increasingly apparent that the child's perspective was not wholly autonomous. The responses provided lacked spontaneity and depth, and the child appeared to echo sentiments that seemed rehearsed or externally influenced. He was unable to offer any substantial or cogent reasons for his refusal to have contact with the petitioner. Instead, his justifications centred around relatively minor grievances and a few isolated incidents that he claimed had occurred several years ago.

[28] What was particularly striking was the child's ability to recall these dated events with an unusual level of specificity, despite their alleged occurrence at a very young age. This selective and detailed memory, contrasted

with an absence of any significant or current issues, raised concerns about the authenticity and origin of these narratives. Taken together, the pattern of responses and the nature of the allegations strongly suggested that the child's views may have been shaped or influenced by the respondent, rather than independently formed through the child's own experiences and reflections.

[29] Therefore, it was my considered view that the child's refusal to engage with the petitioner did not stem from genuine feelings or adverse experiences, but rather from the undue influence exerted by the respondent over time.

[30] In any case, while the wishes of a child should be given due consideration, particularly when the child demonstrates a sufficient level of age and maturity, such preferences are not, in themselves, determinative. The legal position is unequivocal: the 'welfare of the child' remains the paramount consideration. This principle is clearly articulated in s 88 of the Law Reform (Marriage and Divorce) Act, which expressly provides that the child's wishes are subordinate to the overarching concern for the child's welfare.

[31] In such circumstances, personal preferences cannot and should not override the broader, long-term interests of the child's well-being, safety, and emotional development. The paramountcy of the welfare principle ensures that decisions are made in a manner that protects the child from being used as a vehicle for conflict between parties, and instead focuses on promoting stability, care, and healthy relational bonds.

[32] On the meaning of 'welfare of the child', reference was made to a plethora of cases including *Teh Eng Kim v Yew Peng Siong* [1977] 1 MLJ 234; [1977] CLJU 138; [1977] 1 LNS 138; *Mahabir Prasad v Mahabir Prasad* [1982] 1 MLJ 189; [1981] CLJ Rep 182; *Tan Sherry (P) v Soo Sheng Fatt (L)* [2016] MLJU 1264; [2016] CLJU 1586; [2016] 1 LNS 1586; *Tan Erh Ling v Ong Khong Wooi* [2021] MLJU 1583; [2021] CLJU 1325; [2021] 1 LNS 1325; *Tan Siew Kee v Chua Ah Boey* [1988] 3 MLJ 20; [1987] CLJU 77; [1987] 1 LNS 77; and *Sean O' Casey Patterson v Chan Hoong Poh & Ors* [2011] 4 MLJ 137; [2011] 3 CLJ 722, where the meaning of 'welfare of the child' had been considered in the widest sense and, as such, must include the right of the child to bond equally with both his parents.

[33] Although the respondent already had sole custody, care and control of the child, no one parent is superior to the other. The dynamics of the relationship between the child and his father and that with his mother are different. It does not mean that a father's rights with regard to the child are inferior to that of the mother.

[34] Parties must be reminded of the role that a father has in ensuring that a child is raised in a nourishing environment. This was highlighted in the Singapore case of *APE v APF* [2015] SCD 305; [2015] SGHC 17, where reference was made by Tan Siong Thye J to the article *Contact and Domestic Violence — The Experts' Court Report* [2000] Fam Law 615 by Claire, Sturge and Danya Glaser, which provided, in the following passages, an analysis of a father's role to his child:

> The findings are that the position in law that parental involvement on both sides is indeed in the best interests of the child. In a paper commissioned by the Official Solicitor, Claire, Sturge and Danya Glaser, '*Contact and Domestic Violence — The Experts' Court Report*' [2000] Fam Law 615 ('The Experts' Court Report') at pp 616–617, the authors comment that:
>
> > Contact with fathers, as opposed to other family members or people with whom the child has a significant relationship, brings the following, in particular, to bear, although the general principles remain the same:
> >
> > - the father's unique role in the creation of the child;
> >
> > - the sharing of 50% of his or her genetic material;
> >
> > - the history of his or her conception and the parental relationship;
> >
> > - the consequent importance of the father in the child's sense of identity and value;
> >
> > - the role modelling a father can provide of the father's and male contribution to parenting and the rearing of children which will have relevance to the child's concepts of parental role models and his or her own choices about choosing partners and the sort of family life he or she aims to create.
>
> ...
>
> In summary, the benefits include the meeting of his or her needs for:
>
> - warmth, approval, feeling unique and special to a parent;
>
> - extending experiences and developing (or maintaining) meaningful relationships;
>
> - information and knowledge;
>
> - reparation of distorted relationships or perceptions.

[35] The traditional roles of a father and a mother have evolved since the enactment of the Law Reform (Marriage and Divorce) Act. There has since been a shift in cultural norms, and as such, the role of a father is no longer relegated to secondary status. The relationship between a father and child has evolved and is more complex than one assumes.

[36] It cannot be gainsaid, therefore, that a child needs both parents, as both parents have invaluable contributions to make to a child's life. Hence, not all fathers should be painted with the same brush, as there are some who take a more active role in raising children, whilst others undeniably sit back and leave their children to be raised by their wives and domestic help.

[37] In the present case, the child, an 11-year-old boy, had reached an age at which the doctrine of tender years no longer held significant relevance. While the doctrine may be persuasive in matters involving very young children, its applicability diminishes considerably once a child surpasses the age of seven. At this stage of development, it was neither expected nor necessarily in the child's best interests to remain exclusively attached to his mother or to maintain a level of dependence that may hinder his emotional maturity and social development.

[38] In my view, the child's continued clinging to his mother's influence, to the exclusion of meaningful contact with his father, was not a healthy dynamic. At this formative stage, it was important for the child to benefit from balanced parental input, including the presence of a consistent and positive male role model. Exposure to both maternal and paternal guidance served not only to enrich the child's emotional development but also to foster a more balanced and resilient sense of identity.

[39] There was no indication that interaction with the father would cause the child harm; on the contrary, facilitating a relationship with his father would likely contribute to his overall well-being. Denying the child that opportunity based solely on his current attachment to his mother would not serve his long-term interests and could risk perpetuating a narrow and emotionally limiting environment.

[40] Following from this, I took the view that both petitioner and respondent should co-parent the child, the significance of which has been highlighted in s 5 of the Guardianship of Infants Act 1961 ('the Guardianship of Infants Act'), which reads:

> Section 5 — *Equality of parental rights*
>
> (1) In relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, *a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal.*
>
> ... (Emphasis added.)

[41] Pursuant to s 3 (*Duties of guardian of person*) of the Guardianship of Infants Act, both parents, therefore, have equal responsibility towards the

child's support, health, and education. The correlation to the parties' responsibilities is the right of the child, in this case, to bond with both parents.

[42] In the present case, there was also no evidence before the court to suggest that the petitioner had ever been abusive, neglectful, or otherwise unfit to have contact with the child. In light of this, I was of the firm view that it was in the best interest of the child's welfare for the petitioner to continue having access. Notably, the petitioner's access rights were already quite limited, and the respondent's repeated efforts to obstruct even this minimal contact were not only unreasonable, but also demonstrated a lack of regard for the child's long-term emotional wellbeing. The respondent's behaviour in denying access appeared both disingenuous and selfish, prioritising personal grievances over the child's right to maintain a meaningful relationship with both parents.

[43] Most importantly, according to the May 2024 court order, the petitioner's access to the child was not conditional upon the child's wishes. Hence there was no basis for the respondent deny the petitioner's access to the child.

Whether this application was an abuse of process

[44] The respondent claimed that this application was the petitioner's fourth committal application against the respondent and, as such, it was her contention that the petitioner was seeking to punish the respondent, rather than resolve access issues. I had to disagree with the respondent's contention for the following reasons.

[45] First, the petitioner's fourth committal application highlighted the respondent's ongoing and deliberate non-compliance with both the June 2018 court order and the May 2024 consent order. Despite repeated attempts by the petitioner to negotiate access arrangements which were more agreeable to the respondent, all efforts were ultimately unsuccessful.

[46] Of the four committal applications filed, two were withdrawn, and this application marked the second occasion the respondent was found in contempt. However, the earlier contempt finding clearly failed to deter further breaches, as the respondent continued to flout the binding terms of the May 2024 consent order.

[47] I also reminded the respondent that, at the outset, it was she who had unilaterally decided to relocate to Singapore without consulting the petitioner, an action that directly contravened the terms of the June 2018 court order, which expressly granted joint guardianship to the parties. Significantly, the respondent had also failed to initiate any application as required under s 101 of

A the Law Reform (Marriage and Divorce) Act, which provides as follows:

> Section 101 — *Power of Court to restrain taking of child out of Malaysia*
>
> (1) The court may on the application of the father or mother of a child-
>
> (a) where any matrimonial proceeding is pending; or
>
> B (b) where, under any agreement or order of court, one parent has custody of the child to the exclusion of the other,
>
> (2) issue an injunction restraining the other parent from taking the child out of Malaysia *or may give leave for such child to be taken out of Malaysia* either
> C unconditionally or subject to such conditions or such undertaking as the court may think fit.
>
> (3) The court may, on the application of any interested person, issue an injunction restraining any person, other than a person having custody of a child, from taking the child out of Malaysia.
>
> D (4) Failure to comply with an order made under this section shall be punishable as a contempt of court. (Emphasis added.)

[48] Since the respondent had relocated and unilaterally removed the child
E from Malaysia, effectively alienating him from the petitioner, I found it necessary to remind the respondent that, given both parties were granted joint guardianship of the child, she was under a continuing legal obligation to consult and involve the petitioner in major decisions concerning the child's welfare. Accordingly, the respondent was ordered to, within 14 days from the
F date of this decision, inform and update the petitioner on all aspects of the child's education, as well as to disclose the child's current residential address.

[49] Secondly, it was important to emphasise that contempt of court is not about enabling one party to punish the other for failing to comply with a court
G order that may advantage or disadvantage them personally. Rather, contempt proceedings address conduct that threatens the authority, dignity, and effectiveness of the judicial system as a whole. Compliance with court orders is fundamental to the rule of law, and any willful disobedience undermines the administration of justice. The principles governing contempt apply universally
H and impartially, regardless of a party's identity, status, or personal circumstances.

[50] On this note, I found instructive the explanation by Arifin Zakaria CJ in the Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang*
I *Cheong @ George Lim & Ors* [2012] 3 MLJ 458 in adopting the definition of contempt of court as stated in *Oswald's Contempt of Court*:

> [20] In dealing with the applications to set aside the leave for committal proceedings, it is necessary for us to consider the law of contempt. A good starting point would be the definition of contempt of court itself. *Oswald's Contempt of*

Court (3rd Ed), at p 6 gives a general definition of contempt of court as follows:

> To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation.

[21] The jurisprudence for arming the court with the power to punish a contempt is best expounded by Brown J in *Re HE Kingdon v SC Goho* [1948] 1 MLJ 17 as follows:

> But the root principle on which this inherent power to punish for contempt is founded, and *the purpose for which it must be exercised, is not to vindicate the dignity of the individual judge or other judicial officer of a court or even of the court itself, but to prevent an undue interference with the administration of justice in the public interest.*

[22] Hence, the power to punish a contempt is not derived merely from statute nor truly from common law but instead flows from the very concept of a court of law (see *Borrie & Lowe's The Law of Contempt* (3rd Ed), at p 465; and Master Jacob (1970) 23 Current Legal Problems 23). (Emphasis added.)

[51] Following from the paragraphs above in *Tan Sri Dato' Dr Rozali Ismail v Lim Pang Cheong,* it was, therefore, essential to underscore to both parties that the respondent's failure to comply with the terms of the May 2024 consent order was not a matter of preserving the dignity of this court; rather, it was directly linked to the court's authority to guarantee that the administration of justice was neither obstructed nor thwarted.

[52] Reference was made also to the case of *Lee Chang Yong v Teng Wai Yee* [2017] MLJU 1841, where the rationale of the law of contempt was highlighted in the following passage:

> The object of the law of contempt is not to protect judges and their dignity *but to protect the rights of the public by ensuring that the administration of justice is not obstructed or prevented*. To constitute contempt of court, there must be some 'act done, or writing published calculated to bring a court or judge of the court into contempt or to lower his authority' or 'calculated to obstruct or interfere with the due course of justice or the lawful process of the courts'. (Emphasis added.)

[53] I also drew guidance from the case of *Chandra Sri Ram v Murray Hiebert* [1997] 3 MLJ 240; [1997] 3 CLJ Supp 518, where it was stated that the 'Courts must fulfil its responsibilities by passing an appropriate sentence to reflect the extreme seriousness of the instant case, in particular, the respondent's unrelenting interference with due administration of justice and the unmitigated culpability of the respondent as demonstrated in his article. Our courts would not be doing their duties and indeed would be acting against public interest, especially having regard to the facts and circumstances of the

instant case, by imposing a mere fine' — per Low Hop Bing J (as he then was).

[54] Contempt of court is, therefore, less about an individual's personal failure to follow orders and more about the broader principle that the judicial system must be respected and able to operate without interference. No one, should be allowed to thumb their nose at any court order, regardless of his or her position.

[55] Therefore, although this was the petitioner's fourth committal application, it could not be construed as an abuse of the court's process. Rather, it was a necessary recourse in light of the respondent's repeated and wilful non-compliance with binding court orders.

[56] The respondent's failure to deny her non-compliance further underscored the seriousness of the situation. It not only reflected a blatant disregard for the May 2024 consent order, but also illustrated a troubling contempt for the rule of law and the authority of the court. Her actions amounted to a clear subversion of the legal process, effectively making a mockery of judicial orders that were intended to protect the welfare of the child and ensure fairness between the parties.

[57] I also observed that the respondent's submissions were largely centered on recounting the petitioner's past conduct, asserting that her own actions were taken in the best interest of the child. In particular, she repeatedly referred to incidents that occurred between May 2021 and January 2022.

[58] In my view, these incidents were not relevant to this application, especially considering that the respondent had, at a later stage, voluntarily agreed to and accepted the terms set forth in the May 2024 consent order. This agreement demonstrated her acknowledgment of those terms and her commitment to abide by them, which rendered revisiting those past events unnecessary for the purposes of this application.

[59] It was also undeniable that the respondent had not, at any point, made an application to vary the access terms set out in the June 2018 court order. If she believed that the existing arrangements were no longer suitable or in the best interests of the child, it begged the question why she had not sought a formal variation through the proper legal channels. Instead, she chose to proceed by agreement, culminating in the May 2024 consent order, in which she expressly accepted the revised access terms. Her subsequent failure to adhere to those very terms, without seeking judicial intervention, undermined any claim that she was acting in good faith or in accordance with the legal framework governing such matters.

[60] In the final analysis, I found the respondent's conduct to be deliberate, intentional and a willful refusal to comply with the terms of the May 2024 consent order. It was also indicative of her impertinence and total disrespect to the administration of justice, which this court took an extremely dim view of.

[61] Since the respondent had insisted that the child was traumatised as a result of spending time with his father, the petitioner, I took the view that the child together with the parties should seek the services of a psychologist to have their mental health evaluated, pursuant to s 100 of the Law Reform (Marriage and Divorce) Act, which reads:

> Section 100 — *Court to have regard to advice of welfare officers, etc*
>
> When considering any question relating to the custody or maintenance of any child, the court shall, whenever it is practicable, take the advice of some person, whether or not a public officer, who is trained or experienced in child welfare *but shall not be bound to follow such advice*. (Emphasis added.)

[62] The respondent agreed to this course of action on the basis that the child had previously seen a psychologist and that an assessment of the child's mental health had already been obtained. However, I could not place reliance on that report, as the assessment was conducted solely through interviews with the respondent and the child, without any involvement or input from the petitioner. This unilateral approach lacked the necessary objectivity and balance, thereby undermining the credibility and reliability of the report.

[63] Furthermore, the psychological evaluation was arranged without the petitioner's knowledge or consent and absent any direction from the court. This constituted a clear breach of the June 2018 court order, which conferred joint guardianship upon both parties. Any decision affecting the child's welfare, particularly one as significant as a psychological evaluation, required joint consultation or judicial sanction.

[64] In light of these concerns, I determined that the appropriate course was to start afresh by directing a new mental health assessment of the child, this time involving both parents, to ensure a fair, balanced, and comprehensive evaluation.

Whether petitioner's failure to pay maintenance warranted a denial of access to the child

[65] The respondent highlighted to this court the multiple instances where the petitioner failed to pay child maintenance as obligated to do so pursuant to the June 2018 court order, and as such, the respondent contended that she should not be penalised for not complying with the May 2024 consent order.

[66] I was unable to accept this line of argument for the following reasons. First and foremost, this allegation was a general one with no specifics provided.

[67] Secondly, and more importantly, if the petitioner did in fact fail to pay child maintenance pursuant to the terms of the June 2018 court order, the respondent was at liberty to initiate committal proceedings against him, which she had not done.

[68] Thirdly, it was crucial to distinguish between maintenance and access, as they are distinct issues. In the present case, access to the child was never contingent upon maintenance payments. As such, the respondent lacked the authority to hinder the petitioner's access to the child. If there were any breaches of the terms of the June 2018 court order by the petitioner, it was within the respondent's liberty to initiate committal proceedings. However, as mentioned earlier, both parties withdrew their applications against each other in anticipation of a comprehensive settlement. Despite such agreement, the respondent reneged on this agreement, prompting the petitioner to return to court seeking remedies through this application.

[69] On this note, I drew guidance from the recent Court of Appeal case of *GBC v TSB* (Civil Appeal No B-02(IM)-1408–09 of 2023), where it was stated by S Nantha Balan JCA in the following passage:

> In so far, the PH's alleged failure to pay RM25,627 as child maintenance, we take the view *that the PH's default (if any) is separate and distinct from his entitlement to holiday access and the latter is not conditional on compliance with the former, unless the order of the court specifically makes it conditional*. We would add that there is no legal basis to disentitle the PH from enjoying his holiday or any access with the child merely because of his (alleged) non-compliance with payment obligations under the revised consent order. These are separate matters and if there is default in any payment, then it is up to the RW to take the appropriate steps to ensure compliance. (Emphasis added.)

[70] As such, the petitioner's failure to pay child maintenance, if at all, was not a basis or justification for the respondent to withhold the petitioner's access to the child.

Appropriate sanction for respondent's non-compliance with May 2024 consent order

[71] The power of this court to punish the respondent for contempt of court is found in art 126 of the Federal Constitution, and s 13 of the Courts of Judicature Act 1964, both of which read:

> Federal Constitution
>
> Article 126 — *Power to punish for contempt*

The Federal Court, the Court of Appeal or a High Court shall have power to punish any contempt of itself.

******

Courts of Judicature Act 1964

Section 13 — *Contempt*

The Federal Court, the Court of Appeal and the High Court shall have power to punish any contempt of itself.

[72] The petitioner argued that the circumstances of the case justified the imposition of a custodial sentence for the respondent due to her deliberate, intentional, and wilful refusal to comply with the terms of the May 2024 consent order.

[73] While it was undeniable that the respondent had indeed disobeyed the court order, it was emphasised that these proceedings should not be used as a platform for parties to engage in personal vendettas.

[74] The primary function of the court is to administer justice impartially, not to be used as a vehicle for one party to exact revenge against the other. Consequently, any punishment imposed must serve the interests of justice rather than act as retribution for the petitioner. The purpose of the contempt proceedings was not to vindicate the petitioner but to uphold the court's authority and ensure compliance with its orders.

CONCLUSION

[75] Accordingly, in the interest of justice, and after careful scrutiny and judicious consideration of all the evidence before this court, including submissions of parties, as alluded above, this application was allowed, with costs, as the respondent was found to be in contempt of court beyond a reasonable doubt.

[76] A fine of MYR20,000 was imposed on the respondent which was to be paid within 14 days from the date this decision was delivered in open court.

[77] The respondent was duly reprimanded for her conduct and cautioned against repeating such behaviour, as any recurrence would likely lead to adverse consequences, not only for herself, but also for the child.

Committal application allowed with costs; respondent ordered to pay fine in the sum of RM20,000.

Reported by Dzulqarnain Ab Fatar